

## AN ORDINANCE 101324

**APPOINTING A CITY MANAGER; ESTABLISHING AN EFFECTIVE DATE TO ASSUME THE OFFICE; AND AUTHORIZING THE EXECUTION OF AN EMPLOYMENT AGREEMENT, AS REQUESTED BY MAYOR PHIL HARDBERGER.**

\* \* \* \* \*

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** After a nation-wide search, interviews of candidates, and careful consideration, the City Council finds that Sheryl Sculley has all the qualifications required by the City Charter for service as City Manager. Pursuant to the provisions of Article V, Section 45 of the Charter of the City of San Antonio, the City Council appoints Sheryl Sculley to the office of City Manager of the City of San Antonio for an indefinite term, effective November 7, 2005.

**SECTION 2.** The salary of the City Manager is hereby fixed at \$250,000.00 for the first year, effective November 7, 2005. Thereafter, the salary of the City Manager is fixed at \$260,000.00 per year. In addition, the City Manager shall be paid \$35,000 in incentive pay at the end of her second year of employment. The annual base salary shall be paid to the City Manager in bi-weekly payments, each of which shall be, as nearly as practicable, equal to one twenty-sixth (1/26) of said annual salary.

**SECTION 3.** The City Council authorizes City staff to prepare a detailed employment agreement incorporating the basic terms and conditions set out in the letter dated August 29, 2005 from Mayor Phil Hardberger to Ms. Sheryl Sculley, attached hereto as "Attachment A".

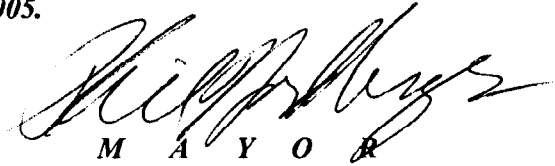
**SECTION 4.** The Mayor is authorized to execute the employment agreement on behalf of the City of San Antonio.

**SECTION 5** In order to facilitate an orderly transfer of duties and the transition from J. Rolando Bono to Sheryl Sculley, the City Council hereby directs that effective November 7, 2005, J. Rolando Bono shall be designated in a position titled Former City Manager in accordance with his employment agreement approved by City Council on June 30, 2005. J. Rolando Bono shall continue his employment with the City of San Antonio in accordance with the terms and conditions of his employment agreement until the effective date of his retirement. All payroll codes and necessary personnel records shall be amended to provide for the exchange of authorized positions to accomplish the intent of this section.

**SECTION 6.** The Director of Finance is hereby directed to identify the source of funds and to perform the actions necessary to carry out the purpose and obligations of this Ordinance.

**SECTION 7.** This ordinance shall take effect immediately upon passage by eight affirmative votes.

***PASSED AND APPROVED this 1<sup>st</sup> day of September, 2005.***



M A Y O R

PHIL HARDBERGER

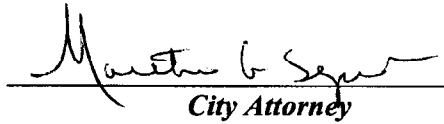
**ATTEST:**



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City Clerk

**APPROVED AS TO FORM:**



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City Attorney

## Agenda Voting Results

Name:

4.

*Main motion*

Date:

09/01/05

Time:

10:58:43 AM

Vote Type:

Multiple selection

**Description:** An Ordinance appointing a City Manager, establishing an effective date to assume the office, and authorizing the execution of an employment agreement; as requested by Mayor Phil Hardberger

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3			x	
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6				x
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

# Agenda Voting Results

*Failed*

Name: 4. Amendment as presented by CM Flores

Date: 09/01/05

*To table - 2 weeks*

Time: 10:44:47 AM

Vote Type: Multiple selection

Description:

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2			x	
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4			x	
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6			x	
ELENA K. GUAJARDO	DISTRICT 7			x	
ART A. HALL	DISTRICT 8			x	
KEVIN A. WOLFF	DISTRICT 9			x	
CHIP HAASS	DISTRICT_10			x	
MAYOR PHIL HARDBERGER	MAYOR			x	



ATTACHMENT "A"  
ITEM #4, 9/01/05

**CITY OF SAN ANTONIO**  
**PHIL HARDBERGER**  
MAYOR

August 29, 2005

Dear Ms. Sculley:

As Mayor of the City of San Antonio, it gives me great pleasure to extend this offer of employment to be our next City Manager. I hope that you will find the terms of this proposed agreement acceptable.

Your salary will be \$250,000 in your first year of employment. After the first year, it will be \$260,000 annually. Your benefit package will include the usual and customary benefits currently available to the City Manager. In addition, you will be paid \$35,000 in incentive pay at the end of your second year of employment.

To provide for your relocation to San Antonio, the City will pay the following transition expenses:

- the reasonable and customary expenses for moving yourself and your family (maximum of two moves)
- the reasonable and customary expenses for two house hunting trips for you and your family
- reimbursement of up to \$1,500 per month for temporary living and storage expenses for up to 8 months from the date of hire.

You will be eligible to accumulate leave at the amounts available to the City's tenured executive employees – 22 days of annual leave per year and 10 days per year of personal leave. You will be eligible to participate in the City's annual personal leave buyback program, and can sell back up to a maximum of 80 hours of unused personal leave every December.

You and your family will be provided with the City's basic health, dental, and vision insurances at no cost to you. The City will reimburse you for up to 15 months for the costs of COBRA payments for your family's current insurance coverage with the City of Phoenix if you choose to continue that coverage. Any additional and optional benefits available to executive employees in the unclassified civil service will also be available to you, including the extended sick leave plan and life insurance.

In the event you are terminated you will be paid one year of your base salary and the City will pay for COBRA coverage for you and your family for one year after termination. These will not be available if you are terminated for cause, such as committing a crime of moral turpitude.

The City will pay for professional memberships such as the International City Managers Association and Texas City Managers Association and for participation in the ICMA annual conference and Big City meetings. The City will pay for business and lunch club memberships related to your employment and city business. Finally, to the extent allowed to the City under IRS guidelines, the City will "gross up" the relocation and temporary housing expenses listed in this letter.

We hope to have a proposed contract with detailed provisions covering the major points above and which will include other standard provisions such as periodic evaluations, hours of work, and other details within the next few days for your review and execution.

As you know, this offer and your contract are subject to formal City Council approval, which I hope will be forthcoming.

I think that you will enjoy being a part of our community here in San Antonio. You are a great fit for our city, and we are delighted to have you on board. I believe that San Antonio is on the edge of a new era of prosperity, and I am excited that you will help lead our future growth as a city.

Sincerely,

A handwritten signature in black ink, appearing to read "Phil Hardberger", with a long horizontal flourish extending to the right.

Phil Hardberger  
Mayor

## **CITY MANAGER AGREEMENT OF EMPLOYMENT**

**THIS AGREEMENT** is made and entered into by and between the City of San Antonio, Texas ("City") and Sheryl Sculley, ("Manager") to establish and set forth the terms and conditions of the Manager's employment as the City Manager of the City.

**WHEREAS**, the City Council of the City of San Antonio ("Council") on September 1, 2005, appointed Sheryl Sculley as the City Manager of the City, effective November 7, 2005 ; and

**WHEREAS**, Sheryl Sculley has accepted an offer of employment as City Manager of the City of San Antonio; and

**WHEREAS**, the Council desires to provide compensation and benefits and establish the terms and conditions of Manager's employment;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties agree as follows:

### **AGREEMENT**

#### **1. General**

City hereby agrees to engage Sheryl Sculley as City Manager of the City of San Antonio, Texas, to perform the functions and duties of that position as specified in the City Charter of the City of San Antonio, Article V, Section 45, which is incorporated by reference for all purposes and by applicable provisions of the City Code or ordinance, and to perform such other legally permissible and proper duties and functions as the Council shall from time to time assign. Council has appointed Sheryl Sculley as City Manager for an indefinite term and may remove her at any time subject only to applicable provisions of the City Charter and the provisions titled "Termination - Severance Pay" of this

Agreement. Nothing in this Agreement is intended, nor shall same be construed to in any way create a definite term for the Manager's appointment as City Manager of the City or to in any way abridge or limit the right of the Council to terminate the Manager at any time at the will of the Council.

The Manager shall report for work and the duties and employment of the Manager shall commence on the 7th day of November, 2005 (the "Commencement Date").

## **2. Compensation**

Starting from the Commencement Date, City agrees to pay Sheryl Sculley an annual base salary, which salary shall initially be \$250,000, payable in installments at the same time as other employees of the City are paid. The annual base salary shall be increased to \$260,000 after the first year of employment. The City shall pay an additional one-time payment of \$35,000 to Manager as retention incentive pay at the end of the second year of employment. In addition, City agrees to review the base salary and other benefits of the Manager at least annually.

## **3. Professional Development and Membership Expenses**

The City Manager is required as a condition of this employment to incur ordinary, necessary and reasonable expenses in order to fulfill official and other duties for the City in the nature of professional dues, subscriptions and fees, educational expenses and similar items. The City agrees to budget and to pay reasonable expenses such as professional dues and memberships, subscriptions and fees, educational expenses, official travel and subsistence expenses of Manager for professional development and costs associated with attendance at meetings, including but not limited to the Annual



Conference of the International City Management Association, "Big City" meetings, the Texas City Management Association, the National League of Cities, the Texas Municipal League, and other national, regional, state, and local governmental groups, association, or committees in which Manager serves as a member, or officer and which are necessary and desirable for her continued professional participation, growth, and advancement, and for the good of the City. The City also agrees to budget and to pay the reasonable travel and subsistence expenses of Manager for short courses, institutes, and seminars for her professional development and for the good of the City.

#### **4. Other Expenses**

The City Manager is required as a condition of her employment to provide an automobile and the upkeep and maintenance therefore, which is necessary to perform her duties. The City shall provide a \$400.00 monthly car allowance. In addition, the City shall provide a cell phone allowance, which is currently \$70.00 per month. The City Manager also is required as a condition of her employment to incur ordinary, necessary and reasonable expenses for the promotion of the business of the City, including expenses for private and civic club dues, home entertaining and other promotional entertainment, travel and similar items. The City shall provide a \$6,000 annual expense allowance, payable in equal bi-weekly installments beginning on the Commencement Date, for expenses described in this section. All expenses described in this section shall be borne by the Manager using the expense allowance established by this section unless full reimbursement or some expense sharing arrangement is authorized either specifically or by policy of the City. Other benefits available to non-uniformed executive employees and included in the annual budget process shall be extended to Manager.

**5. Termination - Severance Pay**

In the event Manager is involuntarily terminated, in addition to all other payments to which she is entitled under this Agreement, she will be entitled to the following severance pay:

- a. Twelve (12) months of her then current base salary in a lump sum payment or over twelve (12) months, whichever she elects; and
- b. Twelve (12) months of continued health benefits for herself and her dependents through COBRA or such other program in which Manager and/or her dependents may be enrolled.

For purposes of this paragraph, "involuntary termination" means:

- a. Manager's discharge or dismissal by the Council upon the expression of majority (presently six votes) of the Council;
- b. Manager's resignation based upon a reduction in Manager's salary or benefits by the Council;
- c. Manager's resignation following written notice informing the Council of its failure to comply with any provisions of this Agreement;
- d. Manager's resignation following a formal or informal suggestion for her to resign or other expression of no confidence by a majority of the Council at a meeting; or
- e. Manager's resignation following any other act suggesting that Manager's services are no longer wanted by a majority of the City Council.

For purposes of this paragraph, "involuntary termination" shall not include Manager's termination for conviction of a crime involving moral turpitude.

## **6. Performance Evaluation**

The Council shall review and evaluate the performance of Manager at least annually and preferably every six months during a properly posted executive session in order to provide the Manager feedback on her performance.

## **7. Leave**

Manager shall be entitled to receive Annual Leave in the amount of twenty-two (22) days for each year of her employment, accumulated as follows:

- a. On November 7, 2005, Manager will be credited with 14 hours of annual leave which will be reflected on Manager's subsequent pay stub receipt.
- b. For the following 10 months, on her hire date anniversary (December 7, January 7, etc) Manager will be credited with additional increments of 14 hours of annual leave.
- c. In the 12<sup>th</sup> month (October 7, 2006), Manager will receive 22 hours of annual leave.
- d. This accumulation totals 22 days (176 hours). Manager may accumulate her Annual Leave without limitation, but shall not carry forward more than one hundred-twenty (120) days, on December 31<sup>st</sup> of any year. Upon termination of her employment for any reason whatsoever, Manager shall be reimbursed her actual Annual Leave balance, in the same manner of payment as other non-uniformed employees of the City but in an amount as provided for in this paragraph. The maximum reimbursement presently allowed under this provision is 145 days.

Manager shall be entitled to receive 10 days per year of personal leave and shall be eligible to participate in the City's annual personal leave buy back program. Manager will be credited with 80 hours of personal leave on her first day, November 7, 2005. Manager can sell up to eighty hours of unused personal leave back to the City beginning December, 2005 and every December thereafter. Manager's accumulation shall occur as follows: On January 1, 2006 and the start of every quarter thereafter (April 1, July 1, October 1, etc.) Manager will be credited with 20 hours of personal leave, for a total 80 hours annually which she can sell back in December of each year.

Payments under this section are calculated at the rate of employee's current hourly rate multiplied by the number of eligible unused personal leave hours.

#### **8. Indemnification**

To the extent permitted under state and local law, the Manager shall have all rights and privileges under the City's Employee Liability Plan adopted by Council in accordance with Ordinance 83927 as amended.

#### **9. Insurance**

The City will pay the premiums for basic health, dental, and vision insurance for Manager and her dependents. Coverage under the City's plan will start on November 1, 2005. The City will reimburse Manager for up to 15 months for the costs of COBRA payments for Manager's dependents' current insurance coverage with the City of Phoenix (or comparable coverage), if Manager elects to continue that coverage. Any additional and optional benefits available or which may become available to non-uniformed

executive employees in the unclassified civil service will also be available to Manager, including the extended sick leave plan and employer-provided life insurance.

**10. Participation in Texas Municipal Retirement System**

Manager shall participate in the Texas Municipal Retirement System to the extent provided for in the Texas Municipal Retirement System Act, Texas Government Code, SUBTITLE G. TEXAS MUNICIPAL RETIREMENT SYSTEM, Chapter 851, as amended.

**11. Relocation and Transition Expenses**

The City shall pay the following relocation expenses and transition expenses incurred by the Manager:

- a. reasonable and customary moving expenses for two moves by movers selected by the Manager and approved by the City,
- b. reimbursement of actual lodging, meals, and travel expenses (airfare, mileage) incurred for two house hunting trips for Manager and family,
- c. reimbursement for actual temporary housing and storage expenses in a maximum amount of \$1,500 per month, for a maximum of eight months from Commencement Date.

**12. Tax Treatment of Benefits and Expenses**

To the extent that payments in Sections 4, 9, and 11 are taxable income under the applicable provisions of the Internal Revenue Code of 1986, as amended (“Code”), the City shall indemnify Manager and hold Manager harmless against all Federal wage and

income taxes, interest and penalties relating thereto. To effect this indemnification, the City shall pay Manager an additional amount that is sufficient to pay any Federal wage and income taxes under the Code on the payments and benefits to which Manager is entitled without the additional amount plus another additional amount sufficient to pay all the income and wage taxes on the additional amounts. The determination of any additional amount that must be paid under this section at any time shall be made in good faith by the independent auditors then employed by the City in consultation with Manager.

13. **Appropriations**

The City shall appropriate, set aside and encumber funds of the City in an amount sufficient to fund and pay all financial obligations of the City pursuant to this Agreement, including, but not limited to, the severance pay, salary, adjustments, and benefits set forth and described in this Agreement.

14. **Notice**

Before voluntarily resigning her position, Manager agrees to give the Council at least sixty (60) days notice in writing of her intention to resign, stating the reasons therefore.

15. **General Provisions**

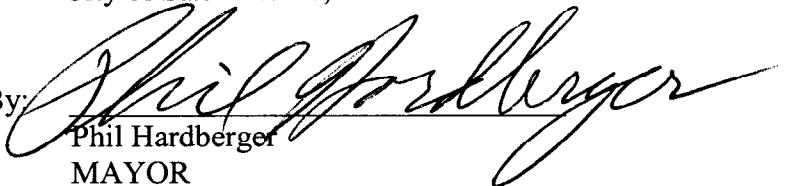
- a. **Governing Law.** This agreement shall be construed in accordance with and governed by the laws of the State of Texas. Venue shall lie exclusively in Bexar County, Texas.
- b. In the event any one or more of the sections or provisions of this agreement

are held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained.

- c. This agreement is intended as a full complete expression of, and constitutes the entire agreement between the parties with respect to the subject matter. All prior agreements, promises, representations, terms and conditions, both oral and written, are merged and incorporated into this agreement, and no such oral or written understandings, agreements, promises, representations, terms or conditions not specifically set forth in this agreement shall be binding upon the City and Manager.

EXECUTED on this <sup>27<sup>th</sup></sup> day of Sept. 2005.


Employer:  
City of San Antonio, Texas

By:   
Phil Hardberger  
MAYOR

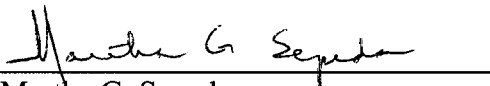
ATTEST:  
City Clerk

  
Leticia M. Vaca

Manager:

  
Sheryl Sculley  
City Manager

Approved as to Form and Content:

  
Martha G. Sepeda  
Acting City Attorney